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SH 2464820

G **One (1) Lexar memory stick containing crime scene photographs, videos, the suspects criminal history report, crime lab reports, jail operations, search warrants, and audio recorded interviews.**

H **Google maps photograph of code-9 route.**

MISCELLANEOUS DOCUMENTS

Deputies Garnica's, Carbajal's, Valle's, and Trejo's weapons training and P.O.S.T training records

East Los Angeles station's AM and PM shift In-Service dated Monday, September 24, 2018

Copy of Los Angeles County Sheriff's Department Pre-stop coordination and Code-9 under Manuel, Policy, and Procedures 5-09/205.00

Shooting and Force Admonition forms



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOSEPH P. ESPOSITO • Chief Deputy District Attorney
VICTORIA L. ADAMS • Assistant District Attorney

SCOTT K. GOODWIN • Director

December 11, 2019

Captain Kent Wegener
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Rene Herrera and Fernando Cruz
J.S.I.D. File #18-0391
L.A.S.D. File #018-13818-0278-013

Dear Captain Wegener:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 19, 2018, fatal shootings of Rene Herrera and Fernando Cruz by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Joel Garnica, #[redacted]
Deputy Sergio Trejo, #[redacted]
Deputy Joe Carbajal, #[redacted]
Deputy Luis Valle, #[redacted]

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MEMORANDUM

TO: CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Rene Herrera and Fernando Cruz
J.S.I.D. File #18-0391
L.A.S.D. File #018-13818-0278-013

DATE: December 11, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 19, 2018, fatal shooting of Rene Herrera and Fernando Cruz by Los Angeles County Sheriff's Department (LASD) Deputies Joel Garnica, Joe Carbajal, Luis Valle, and Sergio Trejo. We have concluded that the deputies acted lawfully in self-defense and in defense of others.

The District Attorney's Command Center was notified of the shooting at approximately 7:20 p.m. on September 19, 2018. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of interviews, firearm analysis reports, crime scene diagrams and sketches, photographs, video evidence, and witness statements submitted to this office by LASD Detectives Joe Valencia and John Duncan. The voluntary statements of the involved deputies were considered as part of this analysis.

FACTUAL ANALYSIS

The Gun Brandishing Incident

On September 19, 2018, at 6:17 p.m., a 9-1-1 caller reported that a man in a black BMW bearing a distinctive personalized license plate had pointed a gun at two people at a market and asked, "Where you from?" (a common gang challenge). The BMW sped away. Deputies immediately began looking for the vehicle. A photograph of the front of the BMW depicting the distinctive license plate is shown below:



Figure 1- Photograph of License Plate of Suspect Vehicle

The Pursuit

At 6:23 p.m., six minutes after the 9-1-1 call and approximately one mile from where the brandishing incident occurred, Garnica and ride-a-long LASD employee Mary R. observed the BMW and broadcast that they were following the suspect vehicle.

An LASD airship arrived overhead and additional backup deputies arrived, assisted in following the vehicle, and prepared to conduct a felony stop of the vehicle.

While the deputies were coordinating a felony stop on the BMW, the vehicle suddenly turned and drove over a curb, through Ruben Salazar Park, onto a grass ballfield, and past people using the park. It appeared that the driver of the BMW, later identified as Rene Herrera, was intending to cut across the park to access a side street in a residential area in order to evade deputies who were following the vehicle closely but had not yet initiated a stop of the vehicle.

When Herrera could not drive around a fence bordering the ballfield, he stopped abruptly.

Hector M., the right front passenger, exited the BMW, ran through the park, and was detained.

Fernando Cruz, the rear passenger, remained in the vehicle.

Herrera exited the driver side of the BMW, drew a black handgun, and fired rounds at the deputies.

An aerial photograph showing the BMW and the position of the pursuing deputies at the time of the shooting is shown below:

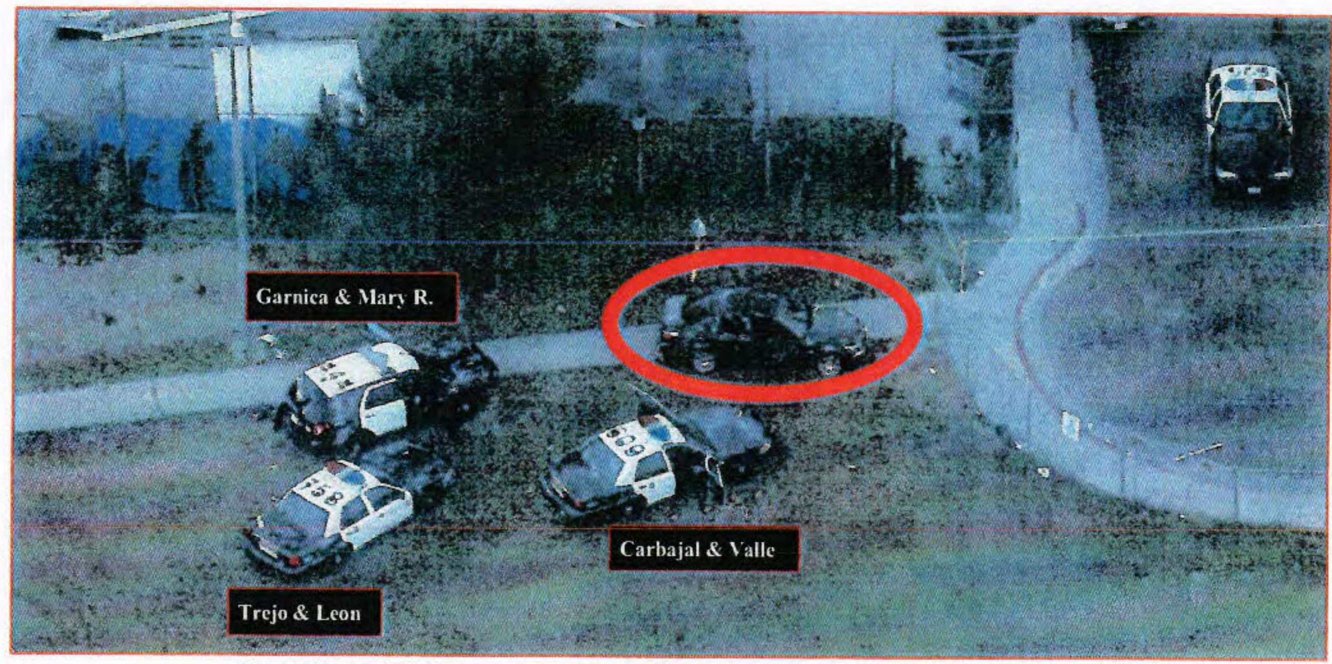


Figure 2- Aerial Photograph of the Vehicles at the Time of the Shooting

The First Shooting

In the first volley of gunfire, Herrera stopped his vehicle, exited the driver's side door, and immediately fired at least three rounds from a .38 caliber revolver at Garnica and Mary R. Two of Herrera's rounds went through the windshield of Garnica's patrol vehicle. A third round went through the driver's side window. Garnica was struck by gunfire in the chin as he was exiting the patrol vehicle. He went to the ground and fired one round at Herrera. Mary R. was struck in the arm with shrapnel. Garnica and Mary R. survived their injuries. Three bullet fragments from Herrera's rounds were located inside the patrol vehicle. A photograph of the bullet damage to Garnica and Mary R.'s patrol vehicle is shown below:



Figure 3- Photograph of Bullet Damage to Garnica & Mary R.'s Patrol Car

The Second Shooting

As Herrera was firing at Garnica and Mary R., Carbajal and Valle arrived. Carbajal stopped the patrol car adjacent to the BMW. When Carbajal opened his driver side door to engage Herrera, Herrera shot him in the right shoulder, injuring him, despite Carbajal wearing a ballistic vest. After he was shot, Carbajal continued to exit his patrol vehicle and fired twelve rounds at Herrera. Valle exited the patrol vehicle at the same time and fired seven rounds at Herrera. Carbajal survived his injury. A photograph of bullet damage to the driver's side mirror of Carbajal and Valle's patrol vehicle is shown below:



Figure 4- Photograph of Bullet Damage to Carbajal & Valle's Patrol Car

The Third Shooting

Trejo arrived during the gunfire and saw Carbajal bleeding, falling to one knee, and holding his neck. Trejo "jumped" out of his patrol car, drew his service weapon, took cover behind Carbajal's vehicle, and focused on Cruz, who was still in the backseat of the BMW. Trejo believed he saw Cruz raise a silver colored gun and point it at him. Trejo thought he was going to die. Trejo fired ten rounds at Cruz. The investigation later determined that Cruz was not armed. A silver colored flashlight was located in the backseat where Cruz was seated. A photograph of that flashlight is shown below:

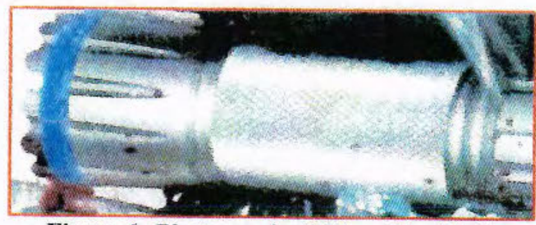


Figure 6- Photograph of Silver Flashlight

The Fire Department Response

The fire department was called and Herrera was pronounced dead at the scene. Cruz died later at the hospital.

Herrera's Gun

Herrera was armed with a loaded .38 caliber revolver, which was located under his body after he was shot. It contained six expended cartridge casings. A holster for the gun was located on the driver's side floorboard of the BMW. Photographs of Herrera's gun are shown below:



Figure 5- Photograph of .38 Caliber Revolver with Six Fired Cartridge Casings

The Autopsies

Deputy Medical Examiner Joseph Vallone, M.D. performed a postmortem examination of Cruz's remains and concluded that the cause of death was multiple gunshot wounds. Cruz was shot in the head and in the right arm. The direction of the gunshot wound was back to front. Cruz was also shot in the right arm. The direction of that gunshot wound was right to left. There were also gunfire related injuries on Cruz's right back and the backs of his right and left hands, consisting of clusters of linear and punctate (petechial) hemorrhages of the skin with surrounding erythema (reddening of the skin). These injuries appear to be consistent with being struck with broken glass or other gunfire related debris. No soot or stippling was noted. A toxicology analysis was performed while Cruz was in the hospital. He had the presence of marijuana and methamphetamine in his bloodstream when he was shot.

Deputy Medical Examiner Martina Kennedy, M.O. performed a postmortem examination of Herrera's remains and determined that the cause of death was a gunshot wound to the head. The direction of the wound was front to back. Herrera had a second gunshot wound to his left forearm that was non-fatal. A toxicology analysis was performed. Herrera had the presence of of methamphetamine in his bloodstream at the time of his death.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger Hector M.s not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"Where the peril is swift and imminent and the necessity for action immediate, the law Hector M.s not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing

because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

Analysis

There is compelling evidence in this case that Herrera, Cruz, and Hector M. were engaging in gang related activity when one of them brandished a firearm at patrons at a local market. That information was relayed to the responding deputies, who believed they were dealing with armed suspects when they followed the BMW. Herrera stopped his vehicle, stepped out, and immediately fired rounds at Garnica and Mary R. who were both struck and injured by the gunfire while still in the patrol vehicle. Garnica, despite being shot in the chin, returned fire. Herrera then turned and fired at Carbajal and Valle, striking Carbajal in the shoulder and injuring him before he could exit his patrol car. Carbajal, although injured, returned fire. Valle also returned fire. Garnica, Carbajal, and Valle were clearly justified in returning fire in order to save their lives and the lives of others.

It was also reasonable for Trejo to believe, under these rapidly unfolding circumstances in which two deputies had been shot, that Cruz, who was in the backseat, was acting in concert with Herrera. Cruz, who did not flee and remained in the car, also appeared to point an object at Trejo, which may have been a silver colored flashlight, which could have been reasonably mistaken for a deadly weapon.

Under these circumstances, when Trejo fired, he reasonably believed that Cruz was armed and pointed a gun at him. Although hindsight being 20/20, the evidence shows that Cruz was not armed at the time of the shooting and Trejo was mistaken. However, a person is not guilty of a crime if he commits an act under an honest and reasonable belief in the existence of certain facts and circumstances, which, if true, would make such an act lawful. CALCRIM No. 3406; *People v. Raszler* (1965) 169 Cal.App.3d 1160; citing *People v. Osborne* (1979) 77 Cal.App.3d 479. When a person commits an act based on a reasonable mistake of fact, his guilt or innocence is determined as if the facts were as he perceived them. *Id.*

Here, based on someone in Herrera's BMW brandishing a firearm, issuing a gang challenge, and ultimately shooting two deputies and injuring Mary R., it was reasonable for Trejo to believe that Cruz was armed and presented a deadly threat. In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, *the danger Hector M.s not need to have actually existed. Id.* (emphasis added). An officer is not constitutionally required to wait until he sets eyes upon a weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun. *Thompson v. Hubbard* (2001) 257

F.3d 896, 899. Because the evidence presented supports the conclusion that Trejo reasonably believed that Cruz presented a deadly threat, his actions were legally justified.

CONCLUSION

We find that Deputy Garnica, Deputy Carbajal, Deputy Valle, and Deputy Trejo acted lawfully in self-defense and in defense of others when they used deadly force against Rene Herrera and Fernando Cruz. We are closing our file and will take no further action in this matter.